

REMARKS/ARGUMENTS

Applicants representatives would like to thank Examiners Yu and Padmanabhan for the courteous and helpful discussion of the issues in the present application on November 25, 2003. The above amendments and following remarks summarize and expand on the content of that discussion.

Claims 33-50 are now active in this application. The new claims are supported by the original claims as filed, and the specification at page 11, lines 4-14, and pages 12-17, which describe the process for preparing the non-crosslinked hydrogel particles of the present invention and page 16, lines 1-15 describing the substantial monodisperse size of the particles. No new matter has been added by these amendments.

Previously Applicants have based patentability arguments on what was believed to be the internal structure of the non-crosslinked hydrogel particles of the present invention, as compared to what was believed to be the internal structure of the particles of the prior art. Upon further consideration, since it is not clear exactly what the internal micro-structure of the present invention particles is, Applicants hereby withdraw and disavow the previous discussions based upon those internal structures. The Examiner is requested to not take those arguments into consideration in determining patentability of the invention as claimed.

Applicants have now presented claims in a product-by-process format, requiring that the product be a product as formed by the dropping method described in the application and in new claim 33. This method provides hydrogel particles which are substantially uniform in their size and shape, as discharging the emulsion or dispersion through an orifice to form droplets would inherently do. It is important that the present particles be formed as droplets in order to provide the uniformity of appearance and shape inherent in such formation.

This provides a final skin cosmetic composition that is not only pleasing to the touch, but is also visually aesthetically pleasing, with the particles most preferably suspended in a

transparent medium, giving the appearance that the particles are floating in the medium in the container.

The closest prior art cited previously appears to be Tsaur et al. This reference nowhere discloses or suggests a process that can provide the type of droplets required in the present invention. In particular, Tsaur et al, at the paragraph bridging columns 4 and 5, describe the preparation of their particles by injecting or coextruding the hydrogel precursor solution with an aqueous solution to form elongated soft hydrogel noodles. These prehardened soft hydrogel noodles are then broken into irregular shaped hydrogel particles using low shear mixing devices such as low speed flotation machine or a mechanical mixer in a batch process or an in-line static mixer or in-line screen in a continuous process. These types of mechanical mixing and shearing devices cannot provide the type of droplets required in the present invention. In fact, by Tsaur et al's very own admission at column 5, lines 4-8, they are seeking irregularly shaped particles, basically prepared by ripping apart a long noodle of the hydrogel material. Accordingly this cannot suggest the present composition which contains particles having the substantially uniform shape and size that would be provided by a process as described in the claim, namely the formation of droplets by discharging the precursor emulsion or dispersion through an orifice.

Notably, the present composition particles would be formed prior to the hydrogel being prehardened, contrary to the process of Tsaur et al. The hardening of the hydrogel composition of the present invention would occur after the formation of the droplets, further providing for the consistency of size and shape in the resulting particles.

Accordingly, the present invention, as now claimed, is believed to be distinguished over the art of record.

The rejections of the claims under 35 U.S.C. 112, first and second paragraphs are believed to be obviated by the cancellation of the rejected claims and redrafting of the claims

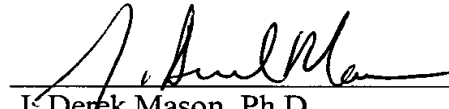
Application No. 09/892,577  
Reply to Office Action of August 13, 2003

to the present invention as product by process claims. The phrases objected to have been removed. The Examiner's objection to the phrase "macromolecular emulsifying or dispersion agent" has been obviated in the newly presented claims by use of the phrase "polymer emulsifying or dispersing agent" which is explicitly supported in the specification at page 13, lines 21-22 and at page 14, line 12. Accordingly, the rejections should be withdrawn.

Applicants submit that the application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



---

J. Derek Mason, Ph.D.  
Attorney of Record  
Registration No. 35,270

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/03)